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Mintz, Levin, Cohn, Ferris, Glovsky and Pope , P.C. MAR 17 1993

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March 17, 1993

Ms. Donna R. Searcy Secretary Federal Communications Commission 1919 M Street, N.W., Room 222 Washington, D.C. 20554

Re: MM Docket No. 92-265

Notice of Ex Parte Presentation

Dear Ms. Searcy:

On March 15, 1993, representatives of Rainbow Programming Holdings, Inc. ("Rainbow") met with the staff of Commissioners Barrett and Duggan to discuss the program access provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). In addition to presenting arguments reflected in Rainbow's written comments in the above-captioned proceeding, the Rainbow representatives proposed that the Commission take into account the manner in which a multichannel video programming distributor positions a particular programming service (as well as, among other things, all other material contract terms and conditions, and the effectiveness, quality and service offerings of the distributor) in determining whether the price, terms, and conditions under which the programming is made available to the distributor constitutes "discrimination" under Section 19 of the 1992 Cable Act.

The Rainbow representatives explained that a Rainbow-managed program service may be offered in some instances as part of the entry level basic tier of satellite services; in other instances as a stand-alone a la carte service; and in still other cases as part of a "hybrid" configuration (e.g., a discretionary package with or without an a la carte option). For example, a major cable MSO that offers the Bravo programming service on an a la carte basis (like HBO and Showtime) is charged a wholesale rate

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penetration of an a la carte offering. Rates charged to distribute Bravo in a "hybrid" configuration fall in between these two poles reflecting that the penetration will also fall between the two poles.

